

herein, PCIA fears that the deployment of PCS could be substantially delayed, and the PCS industry will be less competitive with other wireless services already available.

Respectfully submitted,

THE PERSONAL COMMUNICATIONS
INDUSTRY ASSOCIATION

By: Mark Golden
Mark Golden
Vice-President -- Industry Affairs
1019 19th Street, N.W.
Suite 1100
Washington, D.C. 20036

November 30, 1995

EXHIBIT A



**SUFFOLK COUNTY
POLICE
DEPARTMENT**



TECHNICAL SERVICES SECTION

TELEFAX COVER SHEET

THE MESSAGE CONSISTS OF 0 SHEETS FOLLOWING THIS COVER.

SHOULD ANY PORTION OF THIS MESSAGE BE RECEIVED POORLY
CONTACT THE SENDER BY VOICE AT (516) 852-6484

DIRECTED TO: Ms. Kathryn Drucker

FROM: D/I Gregory Curto

**RETURN TELEFAX AUTOMATIC ANSWER PHONE
(516) 852-6418**

Ms. Drucker,

In exchange for the 2 GHz frequencies, Suffolk County requests a total digital microwave upgrade which includes all enhancements with all County Management Information Services requirements as indicated in the information FEDX'd to you on Thursday, Oct. 5 '95. An additional revenue of \$18 million must be included as an inducement to consummate this negotiation in a timely manner.

Sincerely,



D/I Insp. Gregory Curto

EXHIBIT B

**2 GHz MICROWAVE RELOCATION
CONSULTANT AGREEMENT**

BETWEEN THE

CITY OF SAN DIEGO

AND

KELLER AND HECKMAN

DOCUMENT NO, **C-06186**

FILED **MAY 22 1995**

2 GHz MICROWAVE RELOCATION CONSULTANT AGREEMENT

This AGREEMENT is made, entered into and effective as of the date executed by the City of San Diego, hereinafter referred to as "City" and Keller and Heckman, a partnership organized and existing under the laws of Washington, D.C., hereinafter referred to as "Consultant".

WITNESSETH

WHEREAS the Federal Communications Commission has adopted rules to require existing 2 GHz fixed microwave licensees to relocate to other frequency bands to accommodate Personal Communications Service (PCS) providers; and

WHEREAS the City of San Diego is presently a holder of 2 GHz fixed microwave licenses and may be required to vacate these frequencies pursuant to a negotiated agreement with the Personal Communications Service 2 GHz licensees; and

WHEREAS the City requires professional consulting services to be performed in connection with the FCC mandated Personal Communications Services (PCS) 2 GHz relocation; and

WHEREAS the Consultant and its subconsultants (collectively, the "Keller and Heckman Group") have the personnel, expertise, and resources necessary to accomplish the required Scope of Work; and

WHEREAS the City desires to have Consultant serve as prime contractor under this Agreement and to perform said professional consulting services, and Consultant is willing to do so;

NOW, THEREFORE, in consideration of the mutual covenants, promises, terms and conditions herein set forth, City and Consultant have mutually covenanted and by these presents do covenant and agree with each other as follows.

2 GHz MICROWAVE RELOCATION CONSULTANT AGREEMENT

ARTICLE 1.00 - DEFINITIONS

1.01 DEFINITIONS

- A. "Approved" and "For Approval," means approved by the City as noted.
- B. "Contract" means this Agreement.
- C. "Notice," means a written notice which has been delivered in person to the individual or a member of the firm or entity or to an officer of the corporation for which it was intended, or if delivered, or sent by facsimile, or sent by registered or certified mail to the last business address known to the party giving notice.
- D. "Person," means a corporation, partnership, business association of any kind, trust, company, or individual.
- E. "Consultant Program Manager," means the Consultant's designated Program Manager,

John B. Richards
Keller and Heckman
1001 G. Street
Washington, D.C. 20001
(202) 434-4100
- F. "City Program Manager," means the City's designated Program Manager,

Richard E. Wilken
City of San Diego
Communications and Electrical Division
1220 Caminito Centro
San Diego, CA 92102-1801
(619) 525-8650
- G. "Project" means the PCS Consulting Services Contract.
- H. "Consultant Employee," means any officer, partner, employee, or agent of the Consultant.
- I. "Maximum Contract Sum," means the sum specified in this Agreement for Consulting services provided by Consultant in accordance with this Agreement.

2 GHz MICROWAVE RELOCATION CONSULTANT AGREEMENT

- J. "Scope of Work," means the services to be performed by the Consultant in accordance with this Agreement.
- K. "Personal Communications Service (PCS)" means the emerging telecommunications service which is presently being implemented by the FCC in the 2 GHz frequency spectrum.
- L. "Request for Proposal (RFP)" refers to the City's document entitled "REQUEST FOR PROPOSALS, 2 GHz MICROWAVE RELOCATION CONSULTING," dated January 4, 1995.
- M. "Consultants Proposal" refers to "THE KELLER AND HECKMAN GROUP" Response dated February 9, 1995.
- N. "Basic Services" refers to those services required in the Scope of Work of this Agreement and detailed in the RFP and Consultant's Proposal dated February 9, 1995.
- O. "Additional Services" refers to those services requested by the City over and above the Scope of Work.
- P. "Additional Compensation" refers to any compensation over and above that which is agreed to in this Agreement.

ARTICLE 2.00 - RESPONSIBILITIES OF CONSULTANT

2.01 GENERAL

- A. The Consultant's services consist of those services enumerated in this Article 2.00 of this Agreement. All of said services shall be performed by the Consultant, the Consultant's employees and any consultants and subconsultants in a manner consistent with the Consultant's Proposal.
- B. The Consultant shall be responsible for the professional quality, technical accuracy, timely completion and coordination of all services furnished by the Consultant, its consultants and subconsultants, and its and their principles, officers, employees and agents under this Agreement.
- C. The Consultant's services, under this Agreement, shall be performed expeditiously and with generally accepted professional skill and a level of care required for the orderly progress of the Scope of Work. The City recognizes that Consultant may reasonably rely upon the services of subconsultants within their respective areas of expertise.

2 GHz MICROWAVE RELOCATION CONSULTANT AGREEMENT

- D. The Consultant, and its subconsultants, shall furnish all material, labor, office equipment, facilities and transportation necessary to perform properly and complete in a workmanlike, acceptable manner, the work called for in this Agreement.
- E. The Consultant shall designate, appoint and provide qualified managers and other professional consultants to provide all required work under this Agreement. The professional obligations of such persons shall be undertaken and performed in the interest of the City. Upon request by the City, the Consultant shall furnish the City a copy of the Consultant's contract(s) with its consultants and subconsultants.
- F. The Consultant shall assign John B. Richards to manage the performance of the Consultant's services under this Agreement. Should he or any key employee or consultant or subconsultant of the Consultant be transferred, reassigned, terminated or otherwise unable to complete his or her or their responsibility for any reason, the Consultant shall replace him or her or them with a competent person, consultant or subconsultant reasonably acceptable to City.
- G. The Consultant and its officers and employees, and consultants and subconsultants, shall cooperate with the City in performance of services under this Agreement and shall be available for consultation with the City at such reasonable times with advance notice as to not conflict with their other responsibilities under this Agreement.
- H. The Consultant shall not take any action or do anything which in any manner limits, inhibits, restricts or otherwise infringes on the right and ability of the City to communicate directly with the Consultant throughout the term of this Agreement.
- I. The Consultant shall have no authority to dictate or make decisions concerning the work of the City in the absence of City's written approval. Authority to make or dictate any and all guidelines, decisions, and directives shall be the exclusive right of the City. The Consultant shall review the work of the City for conformity with all pertinent requirements, report the results thereof to the City and assist the City in review and establishment of system directives, but the Consultant shall not have any independent authority or responsibility to make those decisions on behalf of the City.
- J. The City's Request for Proposal, the Contractor's Proposal and all correspondence specifically referenced as attachments to this Agreement, are included in this Agreement. The requirements of this Agreement shall supersede any conflict between the Request for Proposal, the Proposal and this Agreement..

2 GHz MICROWAVE RELOCATION CONSULTANT AGREEMENT

2.02 TERM/SCOPE OF WORK

The following services shall be provided by the Consultant from the date executed through the completion of the Agreement. The term of the Agreement is anticipated to be from May 1, 1995 through May 1, 1996. Other services consistent with the Consultant's Proposal are authorized under this Agreement, as necessary in Consultant's discretion to provide services requested in the Request for Proposal. All services rendered by Consultant for Phases I and II shall be completed within the Maximum Contract Sums specified in Article 4.01.

The Consultant shall assign a Program Manager with authority to commit resources of the Consultant's firm as necessary to meet these minimum terms and conditions of this Scope of Services.

PHASE I - PRE-NEGOTIATIONS

- A. Prepare and present a written report to City staff which summarizes the City's existing 2 GHz microwave network including:
- A minimal functional definition of the City's existing 2 GHz microwave network.
 - Assess the impact of wireless service operations on the City's existing 2 GHz microwave system.
 - Identify potential interference to and from existing microwave paths.
 - Identify linkages between affected microwave facilities and wireless service licensees.
- B. Prepare and present a written economic assessment report which reviews the following:
- The value of the vacated spectrum to both the PCS licensee and the City.
 - The affect of waiting the allotted time or vacating the spectrum in short order.
 - The portion of each market and the amount of spectrum in conflict for each MTA (Major Trading Area) and BTA (Basic Trading Area).
 - The potential net profitability of each market to the wireless providers including assignment of a value to the 2 GHz microwave spectrum licensed

2 GHz MICROWAVE RELOCATION CONSULTANT AGREEMENT

to the City on the basis of potential profitability and on the portion of the total wireless services market affected by the City's microwave networks.

- A cursory review of any incumbents other than the City who will play a role in the relocation process.
 - Propose a strategy to take with those PCS licensee's who are willing to "wait the City out" in order to minimize their expenses.
- C. Prepare and present a written report for City staff which assess wireless service licensees who will be negotiating with the City. The report should include:
- An analysis of each licensee on the basis of capitalization, spectrum auction bid, business experience, past performance, proposed service offerings, etc.
 - The licensee's ranking among market competitors including an estimate of probable market penetration of each licensee.
 - A forecast of the probable negotiation goals for each licensee.
 - Analyze the other PCS licenses that the incumbent has won, review their cellular holdings, the winners other telecommunications holdings and their market share, the corporate structure of each licensee and their ability to carry out PCS operations.
 - A review of the business expertise of each licensee in general including their technology choice and their negotiation skills and strategies. Analyze how these skills will affect the City's negotiations.
- D. Prepare and present a written report which outlines the options available to the City:
- The report should include such options as fiber, leased circuits or private lines.
 - The projected benefits of early band clearing for the PCS provider. With these items in mind, determine the strategies and tactics required to gain maximum benefit from early band clearing.

2 GHz MICROWAVE RELOCATION CONSULTANT AGREEMENT

- Specify what options the City should "put on the table" including the proposed initial asking price, the minimum price to which the City should negotiate to, what information should become public information during the negotiation process and the information the City should solicit from the PCS providers.
- E. Prepare and present a written report which identifies and assesses potential entrepreneurial and operational opportunities. The report should include as a minimum:
- Strategic "partnerships" with wireless services licensees or other microwave licensees; infrastructure leasing; asset sharing.
 - Operational opportunities; e.g., infrastructure upgrades; integration of new wireless services into operational network, etc.
 - Strategic partnerships with both the incumbents and PCS licensees.
 - Feasibility of profitable coalitions with other incumbents and the prospect for joint negotiations.
 - Strategies for negotiations with those PCS licensees which get a "free ride" as a result of early negotiations with the first PCS licensee.
- F. Prepare and present a written report containing recommendations regarding:
- Development of negotiation strategies.
 - Existing/potential franchise fees and other agreements for use of public right of way for the provision of PCS services.
- G. Prepare and present a written report containing legal recommendations in the following areas:
- Analysis of rights and obligations under FCC rules.
 - Drafting of band clearing agreements.

Completion of the following milestones, in the weeks estimated, will be a gauge of Consultant performance.

2 GHz MICROWAVE RELOCATION CONSULTANT AGREEMENT

Weeks from
Project Start

PHASE I
Milestone

- | | |
|-----|---|
| --- | Prepare and deliver presentations at the start of the project, at major milestones and at the close of the project. |
| 1 | Provide a report to City staff which summarizes the existing 2 GHz network. |
| 2 | Prepare a report which assess wireless service licensees who will be negotiating with the City. |
| 3 | Prepare a report which outlines the options available to the City under the FCC's rules. |
| 4 | Prepare an economic assessment report. |
| 5 | Prepare a report which identifies and assesses potential entrepreneurial and operational opportunities. |
| 8 | Provide recommendations regarding existing/potential franchise and other agreements. |
| 8 | Draft band clearing Agreements with wireless licensees. |

PHASE II - OPTIONAL

- A. Prepare and present presentations to the City Council and Council Committees.
- B. Provide additional legal assistance in the following areas:
 - Conduct and/or assist the City in conducting negotiations with wireless licensees on behalf of the City.

ARTICLE 3.00 - CHANGES TO SCOPE OF WORK

3.01 GENERAL

- A. The City may at any time, by written order, make changes within the general scope of this Agreement and in the services or work to be performed by the Consultant hereunder. If such changes cause an increase in the Scope of Work, an equitable adjustment will be made and this Agreement will be modified in writing accordingly.

2 GHz MICROWAVE RELOCATION CONSULTANT AGREEMENT

- B. Any claim of the Consultant for adjustment of this Agreement under this Article 3.00 shall be asserted in writing within thirty (30) days from the date of receipt by the Consultant of the City's notification of change.
- C. No services for which Additional Compensation is required shall be furnished by the Consultant without prior written authorization of the City.

The Consultant's compensation as defined in Article 4.00 "Basis of Compensation," is the maximum compensation payable under the terms of this Agreement and is subject to adjustment as provided in this Agreement. The Consultant shall not provide services beyond the scope of this Agreement unless those services and compensation for those services have been defined in an approved amendment to this Agreement. No one other than representatives of the City can bind the City with regard to payment for services which exceed the amount payable under the terms of the Agreement.

ARTICLE 4.00 - BASIS OF COMPENSATION

4.01 BASIC SERVICES

- A. In consideration of the performance of the Scope of Work herein contained on the part of the Consultant, the City agrees to pay the Consultant for performing the services as described in Article 2.00, of this Agreement, based on the following hourly rates, which include all direct costs, salaries, fringe benefits, overhead and profit as well as xeroxing at Consultant's and subconsultant's offices. Said sums shall also include all business related fees, licenses, permits, insurance, business and occupation taxes, state and local sales taxes and consumer taxes, which are legally enacted as of the date of this Agreement, whether or not yet in effect and shall be subject to adjustment as provided in this Agreement.

<u>PERSON</u>	<u>POSITION</u>	<u>HOURLY RATE</u>
John B. Richards	Project Manager	\$216
Raymond A. Kowalski	Project Attorney	\$238
Jonathan Spencer	Project Attorney	\$171
Dr. Charles L. Jackson	Project Engineer	\$270
Dr. Jeffrey H. Rohlfis	Project Economist	\$270
Mark E. Crosby	Spectrum Management	\$180
Klaus Bender	Microwave Engineer	\$ 90
John Eger	Strategic Planning	\$270
Dr. Nguyen T. Quan	Economic Forecasting	\$157

2 GHz MICROWAVE RELOCATION CONSULTANT AGREEMENT

For Phase I the Maximum Contract Sum shall not exceed one hundred eighty-five thousand dollars (\$185,000).

Phase II, optional, shall be executed only upon prior written City approval. The Phase II Maximum Contract Sum shall not exceed sixty thousand dollars (\$60,000).

- B. The hourly rates as set forth in this Article 4 shall remain in force through June 30, 1997, without adjustment. In the event that City wishes to extend this Agreement beyond June 30, 1997 then the rates shall be adjusted by a factor of 1.0 times the increase in the Consumer Price Index for Washington, D C. from April 1995.
- C. The parties hereto acknowledge that the Maximum Contract Sum for both Phase I and Phase II are initially established through joint estimate of the required Scope of Work. The actual Phase Contract Sums may be lower than so estimated.

4.02 REIMBURSABLE EXPENSES

- A. Reimbursable expense allowance - The above Maximum Contract Sum includes reimbursable expenses in an amount that shall not exceed 10% of the Maximum Contract Sum without prior written authorization of City. Reimbursable expenses shall be billed at the actual cost for travel, long distance telephone and job related expenses for all Consultant's staff including per diem expenses for Consultant's staff.
- B. No markup will be charged on those Consultant's subconsultants.
- C. Travel and Per Diem Expenses: Consultant shall be reimbursed for travel and per diem expenses and other direct expenses for home office employees (not including on-site representatives) in accordance with Consultant's established policies. If Consultant's employees travel by private or commercial coach aircraft, Consultant will be reimbursed at commercial coach airline rates for the class of fair authorized for equivalent Consultant's employees under Consultants established policies. For any part of the route for which there is no regularly scheduled commercial coach air service, reimbursement shall be at rates published by Consultant from time to time. Per diem reimbursement includes meals and accommodation expenses.

Per diem expenses shall be as follows:

- 1. Overnight accommodations: \$140.00 per person per day.
- 2. Away from home base, but not overnight: \$25.00 per person per day.

2 GHz MICROWAVE RELOCATION CONSULTANT AGREEMENT

4.03 LEVEL OF EFFORTS

- A. Maximum Contract Sum is based upon the initial project management team of nine professionals as set forth below. Additional employees or partners of Consultant, under the guidance, supervision and control of Consultant, may be authorized to perform services under this Agreement upon prior written notification to and approval of the City.
- B. The Consultant will provide the following named individuals, who shall be primarily responsible for performance of the services hereunder.

<u>PERSON</u>	<u>POSITION</u>
John B. Richards	Project Manager
Raymond A. Kowalski	Project Attorney
Jonathan Spencer	Project Attorney
Dr. Charles L. Jackson	Project Engineer
Dr. Jeffrey H. Rohlfis	Project Economist
Mark E. Crosby	Spectrum Management
Klaus Bender	Microwave Engineer
John Eger	Strategic Planning
Dr. Nguyen T. Quan	Economic Forecasting

- C. In the event the City reasonably determines that any of the forgoing individuals has not properly discharged his duties, the Consultant, upon receipt of written notice from the City so stating, shall promptly replace such individual with a qualified individual, subject to the prior written approval of the City.

4.04 ADDITIONAL SERVICES

- A. If City requires any Additional Services not included as part of the Basic Services from the Consultant, payment for such services shall be based on the hourly rates specified in Article 4.02. If City elects not to increase the Maximum Contract Sum, then Consultant shall not be obligated to perform Additional Services hereunder beyond those services for which said Maximum Contract Sum covers. In the event City elects to increase the Maximum Contract Sum necessary to complete the Additional Services, then Consultant agrees to complete said Additional Services or to continue services to the extent that said Maximum Contract Sum has been increased.

2 GHz MICROWAVE RELOCATION CONSULTANT AGREEMENT

4.05 NO DEDUCTION IN PAYMENTS

- A. No deduction will be made by City from any payment due the Consultant on account of penalties, liquidated damages or other sums withheld from payments on account of the cost of changes in the Scope of Work, claims or lawsuits through no fault of the Consultant.

4.06 BILLING AND PAYMENT

- A. Monthly Billing - On or about the fifteenth (15th) day of each month, Consultant shall furnish the City with a detailed progress invoice of all professional services rendered and reimbursable expenses incurred during the preceding calendar month. Fees for Services shall be billed in accordance with the Scope of Work. Each progress invoice will be supported by vendors' invoices, expense reports, and any other documentation necessary to substantiate the basic fees and reimbursable expenses. Each invoice shall summarize previous billings, and any balance remaining, separately identified from the current billing. City shall pay the invoiced amount within thirty (30) calendar days after receipt of the invoice.
- B. Final Billing - Upon termination of this Agreement, Consultant shall submit a statement summarizing previous billings rendered, payments received and any balance remaining. Added to such statement, and properly supported by documentary evidence of expenditure, shall be any changes to the total cost of the Services not reported previously. Within thirty (30) days after receipt thereof, City shall pay Consultant all remaining amounts due.

ARTICLE 5.00 - EQUAL OPPORTUNITY

5.01 EQUAL OPPORTUNITY POLICY

The City of San Diego will not discriminate with regard to race, religious creed, color, national origin, ancestry, physical handicap, marital status, sex or age in the award of contracts.

5.02 EQUAL OPPORTUNITY CONTRACTING

The Subconsultant List (EOP-5) or facsimile is a part of this Agreement. All subcontractors have been listed and it is agreed that no changes to the subconsultant list will be allowed without prior written approval from the City. Subconsultants are expected to complete a minimum of 75% of their listed scope of work with their own workforces.

Consultant shall submit to the Project Manager statistical information as requested in the City of San Diego Contract Activity Report indicating the amount of sub-contracting

2 GHz MICROWAVE RELOCATION CONSULTANT AGREEMENT

provided by firms during the period covered by the report. This information should be accompanied by an invoice from each sub-consultant/subcontractor/vendor/service provider listed in the report. Consultant agrees to issue payment to each of the firms listed within 14 days after City release of funds, or be assessed a penalty of 2% of the amount due each firm for each month or portion of a month in which payment is not made.

5.03 EQUAL EMPLOYMENT OPPORTUNITY

Consultant and each of its Subconsultants will comply with Title VII of the Civil Rights Act of 1964, as amended, Executive Orders 11246, 11375, and 12086, the California Fair Employment Practices Act, and any other applicable federal and state laws and regulations hereinafter enacted. Consultant will not discriminate against any employee or applicant for employment based on race, religion, color, ancestry, age, gender, sexual orientation, disability medical condition or place of birth.

Upon request by the City of San Diego, Consultant will submit a current Workforce Report and, if required, an Equal Employment Opportunity Plan which sets forth the actions that Consultant will take to achieve the City's goals for the employment of African Americans, American Indians, Asians, Filipinos, Latinos, Women and people with disabilities.

Further, consultant will cause the foregoing provisions to be inserted in all subcontracts for any work covered by this Agreement so that such provisions will be binding upon each subconsultant.

5.04 LOCAL BUSINESS AND EMPLOYMENT

Consultant acknowledges that the City of San Diego seeks to promote employment and business opportunities for local residents and firms on all City contracts. Consultant will, to the extent legally possible, solicit applications for employment, and bids and proposals for subcontracts for work associated with this Agreement from local residents and firms as opportunities occur. Consultant agrees to hire qualified local residents and firms whenever feasible.

Consultant understands that failure to comply with the above requirements, and/or submitting false information in response to these requirements, may result in withholding progress payments until Consultant complies with above, or termination of this Agreement, and/or suspension from participating in future City contracts as a prime or subconsultant, for a period of not less than one (1) year. For additional or subsequent violation, the period of suspension may be extended for a period of up to three years. Failure to satisfy penalties imposed pursuant to this section shall prohibit consultant from participating in future City contracts until all penalties have been satisfied.

2 GHz MICROWAVE RELOCATION CONSULTANT AGREEMENT

ARTICLE 6.00 - DRUG-FREE WORKPLACE

6.01 DRUG-FREE WORKPLACE

All City projects are now subject to City of San Diego Resolution No. R-277952 adopted on May 20, 1991. All responders should be aware of the provisions of Council Policy 100-17 which was established by the above numbered resolution. The policy applies equally to the contractor and all subcontractors. The elements of the policy are outlined below.

1. "Drug-free workplace" means a site for the performance of work done in connection with a contract let by City of San Diego for the construction, maintenance, or repair of any facility or public work by an entity at which employees of the entity are prohibited from engaging in the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance in accordance with the requirements of this section.
2. "Employee" means the employee of a contractor directly engaged in the performance of work pursuant to a contract as described in Section C.
3. "Controlled substance" means a controlled substance in schedules I through V of Section 202 of the Controlled Substances Act (21 U.S.C. Sec. 812).
4. "Contractor" means the department, division, or other unit of a person or organization responsible to the contractor for the performance of a portion of the work under the contract.

CITY CONTRACTOR REQUIREMENTS

1. Every person or organization awarded a contract or grant by the City of San Diego for the provision of services shall certify to the city that it will provide a drug-free workplace by doing all of the following:
 - a. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the person's organization's workplace and specifying the actions that be taken against employees for violations of the prohibition.

2 GHz MICROWAVE RELOCATION CONSULTANT AGREEMENT

- b. Establishing a drug-free awareness program to inform employees about all of the following:
 - (1) The dangers of drug abuse in the workplace.
 - (2) The person's or organization's policy of maintaining a drug-free workplace.
 - (3) Any available drug counseling, rehabilitation, and employee assistance programs.
 - (4) The penalties that may be imposed upon employees for drug use violations.
- c. Posting the statement required by subdivision (1) in a prominent place at contractor's main office. For projects large enough to necessitate a construction trailer at the job site, the required signage would also be posted at the job site.

- 2. Contractors shall include in each subcontract agreement language which indicates the subcontractor's agreement to abide by the provisions of subdivisions a. through c. inclusive of Section c1. Contractors and subcontractors shall be individually responsible for their own drug-free workplace programs.

Note: The requirements of a drug-free awareness program can be satisfied by periodic tailgate sessions covering the various aspects of drug-abuse education. Although an in-house employee assistance program is not required, contractors should be able to provide a listing of drug rehabilitation and counseling programs available in the community at large.

ARTICLE 7.00 - INSURANCE

7.01 GENERAL

- A. The Consultant shall not commence work under this Agreement until the Consultant has provided a certificate for all insurance required hereunder. Approval of the insurance by the City shall not relieve or decrease the liability of the Consultant. Companies writing the insurance under this article shall be licensed to do business by the State of California.
- B. All required insurance policies shall be maintained continuously through the term of this Agreement. All insurance costs are included in the Maximum Contract Sum.

2 GHz MICROWAVE RELOCATION CONSULTANT AGREEMENT

7.02 COVERAGE

- A. The Consultant shall, prior to execution of this Agreement, furnished the City with certificates of insurance for coverages as required below.
- B. The Consultant shall maintain the following types of insurance coverage during the term of this Agreement. This insurance shall cover all of the Consultant's employees to be engaged in work under this Agreement, and the same shall be required of all consultants and subconsultants of the Consultant.
 - 1. Commercial General Liability Insurance Policy,
 - 2. Commercial Automobile Liability including (a) hired and (b) non-owned automobile; and
 - 3. Worker's Compensation Coverage - Consultant shall comply with all requirements and regulations of the State of California for obtaining and maintaining adequate Worker's Compensation insurance.
 - 4. "Errors and Omissions" Insurance.

7.03 AMOUNT OF COVERAGE

- A. General Liability: General Liability coverage shall be on an "occurrence" basis only and not on a "claims made" basis. Consultant shall maintain limits of no less than \$1,000,000 combined single limit per occurrence for bodily injury and death, personal injury and property damages.
- B. Automobile Liability: Automobile Liability shall include, at a minimum, but need not be limited to, coverages against claims for injuries or death to persons or damages to property which arise from or in connection with the ownership, maintenance or use of any motor vehicle whether owned, hired or non-owned, in the performance of work under this Agreement by the Consultant, its agents, representatives, employees or its consultants or subconsultants. The Consultant shall maintain limits of no less than \$1,000,000 combined single limit per accident for bodily injury or death, personal injury and property damage.
- C. Workers Compensation: Workers Compensation Insurance shall be provided as required by the State of California.
- D. Errors and Omission: Errors and Omissions Insurance shall be provided as agreed to by City.

2 GHz MICROWAVE RELOCATION CONSULTANT AGREEMENT

7.04 CERTIFICATES OF INSURANCE AND RENEWAL CERTIFICATES

- A. The certificates for each insurance policy required by this Article 7.00 shall be signed by a person authorized by that insurer and licensed by the State of California.

ARTICLE 8.00 - INDEMNIFICATION OF HOLD HARMLESS AGREEMENT

8.01 GENERAL

- A. Consultant agrees to indemnify and hold harmless the City, its officers, agents and employees from and against any and all claims, costs, suits and damages, including attorneys fees, arising from the negligent acts, errors or omissions, or willful misconduct of Consultant associated with this Project.
- B. City agrees to indemnify and hold harmless the Consultant, its officers, agents and employees from and against any and all claims, costs, suits and damages, including attorneys fees, arising from the negligent acts, errors or omissions, or willful misconduct of the City associated with this Project.

ARTICLE 9.00 - SUSPENSION, TERMINATION OR ABANDONMENT OF WORK

9.01 SUSPENSION OF WORK

- A. The City may order the Consultant, in writing, to suspend, delay or interrupt all or any part of the work of this Agreement for the period of time the City determines, in its sole discretion, is appropriate. Such written notice will be given at least ten (10) working days prior to the date on which the City wishes to suspend, delay or interrupt.
- B. If the performance of all or any part of the work under this Agreement is suspended, delayed or interrupted for more than thirty (30) consecutive calendar days and such suspension, delay or interruption is not due to the fault or negligence of the Consultant, the Consultant will be compensated for services performed prior to notice of such suspension, delay or interruption. Compensation to the Consultant will be based on work performed prior to the effective date of the suspension, delay or interruption less all previous payments. The Consultant shall not perform further work under this Agreement after the effective date of the suspension, delay or interruption until receipt of written notice from the City to resume performance.
- C. When the work is resumed, the Consultant will be entitled to an equitable

2 GHz MICROWAVE RELOCATION CONSULTANT AGREEMENT

adjustment in the Maximum Contract Sum and time extension, as appropriate, for any increase in the cost of performance of this Agreement caused by the suspension, delay or interruption. This Agreement will be modified in writing accordingly.

- D. No adjustment to this Agreement will be made under this section for any suspension, delay or interruption for which an equitable adjustment to the Maximum Contract Sum or a time extension, or both, is provided for or excluded under any other clause of this Agreement.
- E. A claim under this section will not be allowed for any costs incurred by the Consultant during the thirty (30) calendar days following the date of suspension, delay or interruption, except for previously obligated project related costs such as housing rental agreements, which have not been directed to be demobilized by written notice of the City or which cannot be terminated without incurring a premium cost. Such date will be deemed to commence on the date the Consultant receives a written notice of suspension from the City in writing of the act involved, whichever notice occurs first.
- F. A claim under this section will not be allowed unless such claim is submitted by the Consultant to the City within thirty (30) calendar days after the termination of the suspension, delay or interruption, but not later than the date of final payment to the Consultant under this Agreement.

9.02 ABANDONMENT OF WORK

- A. This Agreement may be terminated by the City upon not less than seven (7) calendar days written notice to the Consultant in the event the Project is abandoned.
- B. If the Project is abandoned under this section, the rights and obligations of the parties, including, but not limited to, compensation to be paid to the Consultant, will be the same as if this Agreement had been terminated pursuant to the Termination for Public Convenience provisions of 9.04 hereinbelow.

9.03 CITY'S RIGHT TO TERMINATE AGREEMENT

- A. If the Consultant:
 - 1. Materially fails to perform, through no act or fault of the City, any of the obligations under this Agreement;

2 GHz MICROWAVE RELOCATION CONSULTANT AGREEMENT

2. Disregards laws, ordinances, regulations or orders of any public authority having jurisdiction; or
3. Makes an assignment for the benefit of creditors without the previous written consent of the City, except to a financial institution authorized to do business in the state of California;

the City may, by serving seven (7) calendar days advance written notice to the Consultant, terminate this Agreement and, at the City's option, take over the work and prosecute the same to completion by agreement with another party or otherwise or delete the remaining work. Any extra costs or damages to the City will be deducted from any money due or coming due to the Consultant under this Agreement.

- B. Upon delivery by the City to the Consultant of a termination notice, the Consultant shall discontinue all services affected by the termination, unless the notice directs otherwise.
- C. If the City terminates this Agreement for a material breach the Consultant shall not be entitled to receive any further payments under this Agreement until all work has been fully performed. The Consultant shall bear any extra expenses incurred by the City in completing the work, including, but not limited to, all increased costs for completing the work, and all damages sustained by the City by reason of such refusal, neglect, failure or discontinuance of work by the Consultant. After all the work contemplated under this Agreement has been completed, the City will calculate the total expenses and damages for the completed work. In no event, however, will any amount be paid to the Consultant for anticipated profit on performed or unperformed services or other work as of the effective date of termination. If the total expenses and damages exceed the unpaid balance, the Consultant shall be liable to the City and pay the differences to the City on demand. Notwithstanding the forgoing, in the event of a dispute of a material breach ending in arbitration as provided herein, resulting in a determination that damages have occurred within the control of the Consultant, then such damages for which the Consultant shall be liable shall not exceed the lesser of (i) 25% of the Maximum Contract Sum or (ii) 25% of remaining fees which would have been due the Consultant upon completion of the Contract.
- D. If the termination for default has been issued and it is later determined for any reason that the Consultant was not in default, the rights and obligations of the parties, including, but not limited to, compensation to be paid to the Consultant, shall be the same as if the termination has been pursuant to the provisions of 8.04 hereinbelow. This shall include termination for default because of failure to prosecute the work.

2 GHz MICROWAVE RELOCATION CONSULTANT AGREEMENT

- E. The rights and remedies of the City in this section are in addition to any other rights and remedies provided by law except as limited under this Agreement.
- F. The Consultant shall not be considered in default in the performance of its obligations under this Agreement, or any of them, to the extent that performance of such obligations, or any of them, is prevented or delayed by any cause, existing or future, which is beyond the reasonable control of the Consultant.
- G. Delays arising from the actions or inactions of one or more of the Consultant's principles, officers, employees, agents, consultants or subconsultants are expressly recognized to be within the Consultant's control and shall be considered for purposes of the default provisions of this Agreement to be delays arising from the actions or inactions of the Consultant.
- H. Notwithstanding any of the foregoing,:
 - 1. If Consultant fails to perform in accordance with this Agreement and the City notifies the Consultant of the specific deficiency in writing, Consultant will have a reasonable opportunity to cure the condition. Consultant shall commence to cure the condition in a manner approved by City within five (5) business days of receipt of notice specifying the default. Consultant shall diligently proceed to cure.
 - 2. If Consultant fails to make a reasonable effort to cure and fails to diligently proceed to cure within said five (5) business days notwithstanding the City's notice, City may terminate the Consultant for failure materially to perform in accordance with this Agreement, pursuant to Article 8.00 of this Agreement.

9.04 TERMINATION FOR PUBLIC CONVENIENCE

- A. The City may terminate this Agreement, in whole or in part, whenever:
 - 1. The Consultant is prevented from proceeding with the Scope of Work by reason of a preliminary, special or permanent restraining order or injunction of a court of competent jurisdiction where the issuance of such restraining order or injunction is caused by acts or omissions of persons other than the Consultant
 - 2. The City elects to terminate in accordance with the provisions of 9.02 hereinabove; or
 - 3. The City determines that termination is in the best interest of the City.